AFFIDAVIT

State of Ohio
County of Montgomery, SS:

JOSEPH N. TOONI, being duly cautioned and sworn, deposes and says that with respect to his claim of having taken physical chemistry I and II and including this as part of his physics studies and for which he claimed six (6) college credits, he included the laboratory work which he took separately from the lecture work for which credit was given; that further the transcript of his Hope College record shows that in the college years, 1934-1935, he took chemistry 410-a and 410-b theoretical and physical chemistry which were for college credit of two (2) semesters which total eighteen (18) college credits in physics and physical chemistry.

That with respect to his claim of twenty-two (22) college credits, he earned sixteen (16) credits in mathematics at Hope College plus additional mathematics courses at military intelligence schools at Fort Riley Kansas and at Baghdad Military College; that he submitted a copy of SF-57 on approximately December 17, 1955 on which he deleted twenty-two (22) college credits for physics and mathematics combined; it is his belief in subsequent typing, he claimed sixteen (16) credit hours for physics, explained above, and the typist by inadvertence, simply typed mathematics by itself and copied the twenty-two (22) credits from the previous SF-57.

Affiant wishes to cite SF-57 dated December 17, 1955, which lists the following courses as having been taken at Oklahoma A & M: Industrial chemistry ten (10) points, engineering four (4) points, and laboratory organic preparation four (4) credits. This totals eighteen (18) credits and not twenty-eight (28) credits that he was charged with having claimed; that subsequent SF forms 57 show twenty-two (22) credits for work done at Oklahoma A &

M; that it should be eighteen (18); that the six (6) credits he claimed for the heat transfer fuels and lubricants courses relates to the engineering review course which he took at University of California Extension School and which course was paid for by Aerojet General Corporation in Sacramento, California while he was employed by Standard Oil Company of Iraq; that he was attending a night school arranged for by the company to train him in oil engineering which he was not previously mentioned; that it was a petroleum engineering series of classes; that it was his understanding that college credit was awarded for the engineering review course at University of California Extension School; that he did not know that the course was non-credit until February 10, 1964, when he received a telegram from the University of California Extension stating it was non-credit; that he was told by Aerojet and the instructor the course was equivalent to the included courses that were credit courses; that he as a student was told that upon completion of the course, he could qualify to take the State examination for Professional Engineer which requires a minimum of fourteen (14) credits in engineering courses; that he had not had these courses or their equivalent before; affiant states further that referring again to his claim of twenty-two (22) graduate credits, he has explained this in an attachment to SF-57 dated December 18, 1961; that the attachment is dated January 4, 1962; that it shows the twenty-two (22) credits to consist of work done at Oklahoma A & M and Institute of Applied Science; that he has earned eighteen (18) credits as explained above at Oklahoma A & M and twenty-six (26) credits at Institute of Applied Science as substantiated by records of his work done at that school; that actually this totals forty-four (44) credits but he claimed only twenty-two (22) credits.

Affidavit

Reference to paragraph 4c(1) of Notice of Proposed Removal. Affiant states the list of technical college courses completed reflects where the undergraduate courses listed were taken, namely at Hope College, Kalamazoo State Teachers College, and at New York Institute of Applied Arts and Sciences. Engineering mechanics I and II and strength of materials were taken by him at New York Institute of Applied Arts and Science; that at Hope College, he took physical chemistry I and II, and comprehensive chemical engineering programs; that he took heat transfer and fluid flow (fluid mechanics) and thermodynamics at University of California Extension in Sacramento; that he studied high polymer theory and practice and chemical engineering analysis in Iraq with Standard Oil Company of Iraq; that when he first went back to Iraq in 1936, he was employed as superintendent of oil affairs of Baghdad during the day; that at night, he taught at Baghdad Higher High School, the equivalent of a Junior College where he taught from 1936 to 1938; that he also took courses in the Higher High School during the same time.

Reference is made to paragraph 4c(2) Notice of Proposed Removal. Concerning the graduate courses at issue, affiant states that he took physical chemistry and industrial chemistry at Oklahoma A & M; that the fuels and lubricants course, structural design, engineering mechanics and power equipment were taken in Iraq with Standard Oil Company; that the remaining courses in the list are thermodynamics, strength of materials and the engineering refresher course itself which were taken at University of California Extension.

Reference is made to paragraph 4(3) Notice of Proposed Removal relating to numbers assigned to the separate courses listed under the heading "List of Technical Courses Completed"; that he either designated the num-

bers as semester hours or he did not assign a heading at all to such numbers. Affiant further states that at no time did he call such numbers credit hours; that in his mind, semester hours means the equivalent in time spent in such courses; that at no time did he wish to represent that he had credit hours for all the courses listed in the attachment; that he had intended that the list would further clarify the nature of his professional educational training; that actually when you total his graduate hours, they do total forty-four (44).

Affiant states that with reference to the charge of falsifying item number 33 through the omission of required information relating to arrests, he was driving and he stopped to ask a police officer for directions to the Racquet Club and this was in front of the Rocket Bar to which he had already been directed; that the officer assumed he was drunk because he was otherwise occupied and affiant had to ask the officer the same question 2 or 3 times; that the officer may have felt affiant did not know affiant was already where it seemed he wanted to be. (Officer misunderstood "Racquet" for "Rocket"). The officer was putting youngsters who were in the Rocket Club into the police wagon; and was probably irritated and the officer told affiant to get in the wagon also; that at the police station, affiant was told to pay Ten Dollars ($10.00) and told it would be forgotten about; affiant understood there would be no record made of the incident; affiant then went back to his car and drove to the Racquet Club. Affiant was not drunk; that the entire incident took less than two (2) hours including a fifteen (15) minute walk back to his car. Affiant did mention his arrest in Upper Marlboro, Maryland, and he would have mentioned the Dayton, Ohio incident if he had felt it was really recorded as an arrest.

Affidavit

Reference is made to Notice of Decision—Removal dated April 2, 1964, paragraph 3(h). Affiant does not believe that anything should be inferred from the mere fact that he had amended his SF-57 to conform to the evidence made available to the Air Force Agency; affiant still stands fast on his statement that no falsification was intended in the preparation of any of his SF-57's; that at no time has he had any motivation to falsify his SF-57 which has remained substantially the same from 1958 to 1964; affiant received his GS-12 in January, 1960, based upon experience on the job; affiant states that he never said that his first and second level supervisors were "liars or dishonest"; that in SF-971. Employees Performance Rating, in April, 1963, he was marked low on "Loyalty to His Employer"; and all he did was make a statement that this was not true or honest, confining his remark to the low rating; that he never did tell his supervisors that they were "liars or dishonest"; that he told this to Mr. Leuben, his supervisor, at that time, and who rated him in this way; that Mr. Leuben is in no way a part of the removal charges per se; but, however, Mr. Leuben was instrumental in originating the oral admonishment based upon affiant's saying the rating was not honest; that Major Mente was not present at this time but has accused him of saying Mr. Leuben and Major Mente were "liars and dishonest."

That Mr. Leuben competed with him for the position of supervisor and which position Mr. Leuben secured in July, 1962; that Mr. Leuben explained to him that by rating him low in "Loyalty to His Employer", he had in mind remarks which affiant made comparing himself to Mr. Leuben during such competition; that such remarks which affiant made then were to the effect that affiant had more experience than Mr. Leuben did; that after Mr.

Leuben became supervisor, affiant never made such remarks; that they never had any difference of opinion to speak of until the performance rating in question; that affiant's performance rating had always been satisfactory or excellent.

In conclusion, affiant states that he at no time had any intent to defraud or misrepresent anything in his SF-57; that he has served satisfactorily since 1947, entering the government service as a chemist; that he at no time received any promotions or transfers that he did not earn through experience; that he never intentionally misrepresented any material fact. Affiant does not believe that the discrepancies claimed by the Air Force are significantly material in view of the lack of intent to defraud to warrant dismissal or removal from federal service.

Under all the facts and circumstances of this case, affiant believes the removal from his job to be too severe a penalty; that he thinks his foreign extraction must be taken into consideration in regard to the misunderstanding with his supervisors.

/s/ JOSEPH N. TOONI
JOSEPH N. TOONI

Sworn to before me and subscribed in my presence this 31st day of January, 1967.

/s/ WILLIAM R. COEN
Notary Public

Letter of Proposed Removal

LETTER OF PROPOSED REMOVAL

SGME 07 FEB 1964

Notice of Proposed Removal

SGMES-20 (Mr. Joseph H. Tooni)

1. It is proposed to remove you from your position with the Air Force not earlier than 30 days after receipt of this letter.

2. This action is predicated upon your having falsified official documents. You furnished false information on your educational background both at the undergraduate and graduate levels. You listed college courses which you never had taken and college credits which you never had received. You further stated that you obtained graduate credits from a university which is nonexistent. In addition, you failed to furnish complete information on your arrest record in that you omitted from official documents a particular occasion of having been arrested.

3. This proposed removal is specifically based upon your falsifying the following official documents contained in your official personnel folder:

a. Standard Forms 57, "Application for Federal Employment", dated 18 Dec. 1961, 11 Jan 1960, 9 Sep 1959, and 28 July 1958, as amended by signed statements from you dated 18 Dec 1961 and 4 Jan 1962.

b. Standard Form 61, "Appointment Affidavits", dated 4 Jan 1962.

4. With reference to each of the above listed SF 57's, as amended, you are specifically charged with falsifying the information listed under item number 18, entitled "Education", as follows:

a. Under item number 18.D you listed the following as your chief undergraduate college subjects with accompanying semester credit hours:

Chemistry—32
Engineering—24
Mathematics—22
Physics—16

Official records of your educational background above high school level reveal the above information to be false to the following extent:

(1) That you obtained only 12 semester hours of engineering courses or subjects at the undergraduate college level as opposed to the 24 hours you claimed. The courses which you completed were "Metallurgy I and II" at New York Institute of Applied Science for a total of 12 semester credit hours.

(2) That you obtained only 10 semester hours of physics courses or subjects at the undergraduate college level as opposed to the 16 hours you claimed. The courses which you completed are as follows:

(a) Physics 301—five semester hours from Hope College.

(b) Physics 302—five semester hours from Hope College.

(3) That you obtained only 16 semester hours of mathematic courses or subjects at the undergraduate college level as opposed to the 22 hours you claimed. The courses which you completed are as follows:

(a) Math 2—three semester hours from Hope College.

(b) Math 3—three semester hours from Hope College.

(c) Math 204—Four semester hours from Hope College.

(d) Math 205—Four semester hours from Hope College.

(e) Math 101—Two semester hours from Hope College.

b. Under item number 18.E you listed the following as your chief graduate college subjects with accompanying semester credit hours:

Chemical Engineering—12
Organic Preparation—5
Engineering Mechanics—5
Heat Transfer, Fuels & Lubricants—6

Except for the subject listed as "Organic Preparation", the above information is false in that official records reveal that the only graduate college subject or course which you have taken is Chemistry 570, entitled "Advanced Organic Preparation". This was a three semester hour course completed by you in January 1936 at Oklahoma State University (formerly Oklahoma A&M). It is to be noted that you claimed, in item 18.E, a total of 28 semester credit hours of graduate college level subjects while in actual fact you have obtained only three semester hours.

c. Attached to each of the referenced SF 57's are essentially identical listings entitled "List of Technical College Courses Completed". These attachments are a continuation of item number 18 of the SF 57's. On each you have listed courses which are not supported by the official records of your educational background and, therefore, are false entries.

(1) The false entries which you listed under the heading of undergraduate courses are:

(a) Engineering Mechanics I and II
(b) Strength of Materials

(c) Heat Transfer and Fluid Flow
(d) Physical Chemistry I and II
(e) High Polymer Theory and Practice
(f) Thermodynamics
(g) Comprehensive Chemical Engineering Problems
(h) Chemical Engineering Analysis

(2) The false entries which you listed under the heading of graduate courses are:

(a) Physical Chemistry
(b) Industrial Chemistry
(c) Fuels and Lubricants
(d) Thermodynamics
(e) Engineering Mechanics
(f) Structural Design
(g) Strength of Materials
(h) Power Equipment
(i) Engineering Refresher Course

(3) While not presented as a charge of falsification, it is believed pertinent to point out that you presented misleading information by listing a number alongside each graduate course contained in the above mentioned attachments. These numbers, while listed without benefit of a heading or explanation, do convey the impression that they represent credit hours. When added together these numbers total 40, and appear to represent that you have completed or obtained that number of graduate credit hours. As previously presented, however, you have completed only a three semester hour graduate course.

d. Under item number 18.C you listed, in part, that you had attended California State College, Sacramento, California, during the year 1957 and had obtained 14 semester hours of graduate courses. In the listings entitled "List of

Technical College Courses Completed" attached to each of the referenced SF 57's, you further stated that "Graduate courses were taken at Oklahoma A&M College, Stillwater, Oklahoma; and California State College, Sacramento, California". Aside from the two statements being contradictory, official records of your educational background reveal that the only graduate college course which you have taken was the three semester hour course in chemistry specifically mentioned in paragraph 4b. Your statements that you obtained 14 semester hours of graduate courses from California State College and that you attended such a college are false in that there is no such institute. The official records of your educational background do establish, however, that you did attend the University of California Extension School in Sacramento, California, from 11 Feb to 11 Jul 1957 in which the facilities of Sacramento State College were utilized. While enrolled you did complete a noncredit course entitled "Review of Engineering Fundamentals—874".

5. With reference to the mentioned SF 57 dated 18 Dec 1961, as amended, you are specifically charged with falsifying item number 33 through the omission of required information. You are further specifically charged with falsifying item number 8 to the above mentioned SF 61, dated 4 Jan 1952, through the omission of required information. These items are identical on the SF 57 and 61 and are as follows: "Have you ever been arrested, charged, or held by Federal, State, or other law-enforcement authorities for any violation of any Federal law, State law, county or municipal law, regulation or ordinance? Do not include anything that happened before your 16th birthday. Do not include traffic violations for which a fine of $25 or less was imposed. All other charges must be included even if

they were dismissed. If your answer is "yes" give in Item 34 for each case: (1) approximate date, (2) charge, (3) place, (4) action taken." On each of these forms you answered yes to this question and listed occasions of having been arrested consistent with the dates of the Standard Forms. You failed, however, to list on each of the forms that you had been arrested on 10 Sep 1960 at 238 South Ludlow Street in Dayton, Ohio, on the charge of "drunk" and that as a result you forfeited a $10.00 bond.

6. You are reminded that you received an oral admonishment on 24 Apr 1963 for various infractions, among which was your calling your first and second level supervisors "liars and dishonest". In addition you received an official reprimand dated 9 May 1962 for conduct which gave the impression that you were asleep on duty. Your further received an official reprimand dated 29 Aug 1963 for your insolence and disrespectful behavior towards your immediate supervisor. These previous offenses were considered in addition to the present offense in arriving at the decision to propose your removal.

7. The evidence used to support the charges of falsification contained in paragraphs 4 and 5 above was furnished as a result of an official investigation requested by the Deputy Commander of the former Dayton Air Force Depot. The investigation was requested on 15 Feb 1962, while you were employed at the Depot, based upon receipt of information from another Federal agency. The investigation was completed on 22 Oct 1963.

8. You may answer these charges in person, in writing, or both to the undersigned. You may also submit affidavits in support of your answer. You will be allowed 10 days from the date of receipt of this letter to submit your

answer. In preparation of your reply you are encouraged to review your official personnel folder and the documents with which you are charged as having falsified. This right to reply is a significant right granted to you. If you believe the proposed action is unwarranted, it is important that you reply stating completely all the facts why you believe the proposed action should not be taken. If you care to read the applicable regulations pertinent to this action or obtain information about how you make a reply, you may contact Mr. Jack Rottman of the Civilian Personnel Division, Building 70, telephone extension 76126. This action is being taken in accordance with the procedures set forth in Chapter 752 of the Federal Personnel Manual.

9. No decision to remove you has been made or will be made until after the time allowed you for reply. Any reply you make will be given careful consideration before a final decision is made. Whether or not you reply, a written notice of final decision will be given you. If you do not understand the above reasons for the proposed action, contact the undersigned for further explanation.

10. No action based on the charges set forth above will be taken to remove you from duty status in your present position during this 30 day advance notice period.

/s/ LOREN D. CARLSON
LOREN D. CARLSON, Captain USAF
Acting Chief
Engineering and Technical Division
Directorate of AF Support

Memorandum Decision and Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CASE NO. 3117

JOSEPH E. TOONI,

Plaintiff,

v.

EUGENE ZUCKERT, Secretary of the Air Force,

Defendant.

MEMORANDUM DECISION AND ORDER

(Filed July 3, 1967)

This matter is before the Court upon cross motions for summary judgment. The Court has withheld decision of this action pending a decision by the Court of Appeals in another employee dismissal case which was decided by this Court. On June 22, 1967, the Court of Appeals released its decision in that case, *Fass* v. *Ruegg*, No. 17,031. In that case the Court of Appeals noted the limited role the courts are to play in cases where individuals are dismissed from federal employment and then seek review of their severance. The Court quoted with approval from a decision, *Baum* v. *Zuckert*, 342 F.2d 145, 147 (6 Cir. 1965) wherein Judge Phillips, speaking for the Court, said:

> "The function of a reviewing court in cases involving the discharge of civil service employees is a limited one. . . . The judicial function is to determine whether there has been substantial compliance with the applicable procedures and statutes, and not to review the administrative determination as to the wisdom or good judgment of the agency in exercising

its discretion . . . the courts will not examine into the merits of the dismissal. . . ."

In the instant action plaintiff was removed from federal service; he appealed his removal to the Chicago Region of the United States Civil Service Commission which found in his favor and reversed the removal. The United States Department of Air Force appealed that decision to the Board of Appeals and Review, United States Civil Service Commission, Washington, D. C. That Board concluded that plaintiff's misrepresentations with respect to his undergraduate and graduate studies were intentional and material, being designed to mislead the Air Force into believing he had a strong educational background in engineering studies, whereas, in fact, his professional education preparation was mainly and primarily in Chemistry. The Board concluded that the plaintiff's falsification of his educational record in his application for Air Force employment, when considered in conjunction with his prior record of one oral admonishment and two official reprimands for other established breaches of discipline, warranted his removal from federal service. Under the facts in this case, the foregoing determination cannot be said to be arbitrary or capricious, as urged by plaintiff.

It may be true, as argued by plaintiff's counsel, that the government has lost the services of a skilled and valuable employee; but this Court cannot consider the merits of plaintiff's dismissal. The required procedural steps were followed in plaintiff's dismissal and the review of that dismissal. Accordingly, plaintiff's motion for summary judgment is DENIED; defendant's motion for summary judgment is SUSTAINED.

/s/ CARL A. WEINMAN
Chief Judge U. S. District Court

JUDGMENT

(Filed July 3, 1967)

This action came on for (hearing) before the Court, Honorable Carl A. Weinman, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that upon the cross-motions for summary judgment filed by the respective parties and the court being fully advised in the premises that defendants motion for summary judgment be and it is hereby sustained and Plaintiffs motion for summary judgment is denied and plaintiffs complaint is hereby dismissed.

Dated at Dayton, Ohio, this third day of July, 1967.

/s/ R. L. SNELL
JOHN D. LYTER
Clerk of Court
By: R. L. SNELL, Deputy

Grievance Hearing

GRIEVANCE HEARING

SUBJECT: Grievance Hearing 2 November 1961

TO : Commander
Dayton AF Depot

Thru: Chief, Civilian Personnel

Request grievance hearing as prescribed in AF Manual 40-1 on matters already in hands of authority and command.

#1-INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver *ONLY* to addressee ☐ Show address where delivered

(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Gentile AFD

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Frank Ayers

DATE DELIVERED

11/6/61

ADDRESS WHERE DELIVERED (only if requested in item #1)

C55—16—71548-4 GPO

Daniel L. Edwards, Jr.
MDHQAI

cc: Commander
Dayton AF Depot

RECEIPT FOR CERTIFIED MAIL—20¢

SENT TO: Chief, Civilian Personnel

STREET AND NO.: Dayton Air Force Depot

CITY AND STATE: Dayton Ohio

POSTMARK OR DATE: DAYTON, OHIO NOV 3 1961 OVERLOOK BR.

If you want a return receipt, check which

☐ 10¢ shows to whom and when delivered

☐ 35¢ shows to whom, when, and address where delivered

If you want restricted delivery, check here ☐ 50¢ fee

FEES ADDITIONAL TO 20¢ FEE

POD Form 3800
Apr 1960

SEE OTHER SIDE

AFM 40-1, AF A-12.5

TS 186 AFM 40-1
31 DEC 61 AF A-12.5

". . . In view of decisions of the United States Supreme Court which have emphasized the importance of adherence to procedural requirements when taking adverse personnel actions, the commander will assure, when making his decision, that there has been compliance with applicable procedures whether externally imposed or established by the Air Force at any level. If unusual circumstances cause a delay, the emplcyee will be notified of the reasons in writing.". . .

DAAFDM 40-1

1 September 1961 DAAFDM 40-1
Chapter 9

* * * * *

e. If the grievance cannot be resolved informally, the supervisor to whom the grievance is presented in writing, will initiate action within 10 working days to obtain pertinent facts; afford opportunity to persons complained against to make a written reply; render a decision, and notify the employee in writing of his decision and reasons. *If the decision is not acceptable to the employee, he will be informed that he may present his grievance in writing, through the remaining supervisory levels, to the Commander.* If the employee requests a hearing, the statement of grievance will be sent to the Civilian Personnel Officer who will insure that an impartial grievance committee is convened within 10 working days of the date of receipt of the request to hear the grievance. If the statement does not contain a specific request for a grievance hearing the employee will be contacted orally to determine whether he

desires a hearing. This information will be recorded with the statement of grievance and forwarded to the Installation Commander.

f. If a committee is not convened, the CPO will ascertain the facts and submit a summary to the Commander, together with findings and recommendations. Both the supervisor and the employee will be permitted to comment on the statements made by the other during the course of the inquiry.

g. Within 10 working days after completion of the hearing, the committee or the CPO, if no hearing was held (paragraph 6f) will prepare a complete record of the grievance to the Commander. The Commander will consider the findings and recommendations of the committee or CPO; make a decision, and give written notice of the decision to the employee within 10 working days of the date on which the recommendations were received.

* * * * *

AMCM 40-2

HEADQUARTERS, AIR MATERIAL COMMAND
AMC MANUAL Wright-Patterson Air Force Base, Ohio
No. 40-2
29 July, 1959

FOREWORD

1. PURPOSE AND SCOPE. *This manual establishes Command policy, applicable* both in the continental United States and overseas with regard *to disciplinary and other adverse personnel action procedures* not specifically defined in Chapters C2 and S1 of Air Force Manual 40-1. This manual is designed to establish a uniform concept of discipline and disciplinary action and to assure that whenever necessary, prompt and effective corrective action will be taken in the interests of maintaining an efficient work force. This manual does not cover any action regarding

retirement, reduction-in-force, actions ordered by the Civil Service Commission, action taken on grounds of political activity or subversive activity, or security (Air Force Regulation 40-12), or actions taken in connection with the performance rating program. In no way does this manual imply an infringement of the employee's rights to use the grievance procedure if he feels he has been disciplined unjustly. (Italics ours.)

2. POLICY. Employees will be fully informed concerning the conditions of their employment, their duties and responsibilities as well as their rights and privileges. The Air Material Command recognizes its obligations to employees and in return expects each employee:

a. To be honest, reliable, trustworthy, and of good character, reputation, and unquestioned loyalty to the Government and the Command.

b. To support and defend the Constitution of the United States of America.

c. To give a full day's work for a full day's pay.

d. To conduct himself on and off the job in a manner that will reflect upon himself and the Air Materiel Command.

e. To respect the administrative authority of those who direct his work.

f. To observe the spirit as well as the letter of the rules and regulations governing his conduct. Emphasis will be placed on the prevention of situations requiring disciplinary actions through the exercise of good management practices. When, however, need for disciplinary action arises, the action which is justified and warranted will be taken promptly, impartially, and constructively.

3. APPLICABILITY. *The policy and procedures set forth in this manual will be applied in order to maintain*

acceptable standards of employee conduct, production, and efficiency and to insure the exercise of sound management-employee relations practices (AMC Regulation 40-14). This manual will be made available to all levels of supervision responsible for civilian personnel management, as indicated in paragraph 6, AMC Regulation 40-7. (Italics ours.)

4. RESPONSIBILITY. The Civilian Personnel Division, Directorate of Personnel and Support Operations, Hq AMC, prepared this manual and will be responsible for the preparation of future revisions or editions.

5. COPYRIGHT. This manual contains no copyright material.

FOR THE COMMANDER:

(SEAL)

ERNEST L. WALTERS
Colonel, USAF
Chief, Administrative Services

---

* This manual supersedes AMCM 40-2, 5 Apr 56, and -2A, 14 Jun 56.
OPI: MCAC
DISTRIBUTION: See page (ii)

* * * * *

16. NOTICE PERIODS:

a. Notice periods will vary in length with various types of actions and employees (tables 2 and 3, chapter AF

S1.5, AFM 40-1 and the table in paragraph 20, this manual).

(1) The determination as to what is a reasonable time will depend on all the facts and circumstances of the case.

(2) Sufficient time will be allowed to give the employee ample opportunity to prepare his answer and secure affidavits.

(3) Unless unusual circumstances exist which justify immediate action, the following notice periods for proposed suspension, removal, and separation actions are sufficient:

(a) In cases of suspensions of 30 days or more, a 30 days' notice period will be given preference eligibles. When practicable all other employees will also be given a 30 days' notice period. In no case will the notice period be less than 2 weeks (14 calendar days) for nonpreference eligible employees.

(b) In effecting suspensions due to emergency the length of the notice period may vary depending upon the procedural requirements applicable in individual cases and the urgency of circumstances. It will be necessary to consult the civilian personnel office before processing the emergency suspension.

(c) In Separation (Disqualification), that is, action taken during the probationary or trial period, a notice period of 2 weeks (14 calendar days) will be given.

(d) In Removal actions, it is mandatory that a 30 days' notice period will be given preference eligibles. A 30 days' notice period may be given all other employees; however, a 2 weeks' advance notice (14 calendar days) normally is considered a reasonable notice period for nonpreference eligible employees.

b. The notice period will begin the day *after* the employee receives the advance notice of proposed action, and

will terminate at the close of the last day of the notice period. Only *full calendar days* will be counted. For example, a 30 days' notice period is given the employee. The advance notice of proposed removal is received by the employee on 1 April. The notice period is computed as having started the next day, 2 April, and will be terminated at the close of the 30th day thereafter. The action will be effected not earlier than the close of the employee's regular hours of duty on the day on which the full notice period is completed.

c. The civilian personnel office may be consulted in these matters for further information as to regulatory requirements for determining notice periods.

17. STATUS OF EMPLOYEE DURING NOTICE PERIOD:

a. Normally, the employee will be retained in his position in a work status during the notice period of a pending suspension, removal, or separation action.

b. The immediate supervisor, through the appropriate operating official, may request that the employee be withdrawn from his position and/or the work area for the period if there is valid reason to believe his presence:

May result in damage to Government property.

May be detrimental to the interests of the Government.

May be injurious to the employee, his fellow workers, or the general public.

c. When it is necessary to place the employee in another position during the notice period, an appropriate written request, stating why the action is necessary, will be forwarded to the civilian personnel office for consideration. On the basis of reasons given and applicable procedural requirements, a determination will be made as to the exact status of the employee during the notice period.

d. In the advance notice of proposed action, the employee will be advised of his duty status during the notice period.

18. NECESSITY OF NEW ADVANCE NOTICE:

a. When the action decided upon is the same as or less severe than, the action stated in the advance notice, and is based on the reasons or charges specified in the advance notice, no new notice of proposed action is necessary.

(1) Regardless of its significance any error in the notice should be corrected. Minor typographical errors may be corrected by pen and ink change on all copies of the notice if the correction is not significant to the reasons or charges in the proposed action, and if the correction in no way violates the employee's rights.

(2) When the error is considerable, but does not involve any change in the reasons, charges, or the proposed action, a corrected notice may be issued. For example, a corrected notice should be issued if there is an omission of required information, such as, failure to cite the regulatory authority, to give the location and telephone number of the placement and employee relations adviser named, or to give all information about the importance of the employee's reply. When necessary, the notice period may be extended with the issuance of a corrected notice so that the employee will have full opportunity to consider the additional information and make a reply, if he so desires.

(3) In the event a lesser penalty than that originally proposed is determined appropriate after reviewing the employee's reply and/or reconsideration of the offense, the employee will be so advised in the letter of final decision.

b. A new advance notice will be issued if the following conditions apply:

(1) A more severe penalty is decided upon.

(2) When the action set forth is based, either in whole or in part, on reasons or charges not specified in the advance notice.

c. When a new advance notice is given, all procedural requirements, including the notice period, will be complied with anew.

* * * * *

LETTER—COL. LAWTON

HEADQUARTERS
MIDDLETOWN AIR MATERIEL AREA
UNITED STATES AIR FORCE

Detachment 14, Heath Annex
Wright-Patterson Air Force Base, Ohio

Reply to
Attn. of: MAHQI (SEAL)
20 Apr. 62

SUBJECT: Notice of Proposed Removal and Decision to Remove—Inefficiency

TO: MAHQI (Mr. Daniel L. Edwards, Jr.)

1. This letter corrects an error appearing in Paragraph 8 of MDHQA letter of 15 February 1962 by deleting section 9.102(a)(1) and inserting Part 22 of the Civil Service Regulations.

2. You have received job protection rights under Part 22 of the Civil Service Regulations and Section 14 of the Veteran's Preference Act, as shown by the 30 day notice period, the lengthy extension of time for reply to the notice, and the appeal rights shown in the 16 April notice of decision.

/s/ THOMAS O. LAWTON, JR.
THOMAS O. LAWTON, JR.
Colonel, USAF
Director of Heath Operations

Section 5

THE HEARING PROCESS

1. GENERAL. The hearing process provides a complainant the opportunity to present his dissatisfaction to an ad hoc committee. This process is used to consider such matters as dissatisfactions with working conditions or work relationships, personal bias or prejudice, performance ratings, and adverse personnel actions.

2. AD HOC GRIEVANCE COMMITTEE.

a. When it is determined that the hearing process is the appropriate means for consideration of a grievance the commander will appoint a committee on an ad hoc basis. Every effort will be made to select members who will be impartial in weighing the facts and will use sound judgment in arriving at recommendations. The membership of this committee will be composed of Air Force personnel and will consist of three voting members and a non-voting chairman. At least two of the three voting members will be civilian employees of the installation. Members will be selected from outside the immediate organizational unit to which the aggrieved employee is assigned or from which he was separated. The appellant will be permitted to select one voting member. The selection will be made from the roster established under the provisions of paragraph *3c*, Chapter AF P-4.5. A non-voting chairman generally will be selected from among the best qualified members of the servicing civilian personnel office. In the event a key member of the civilian personnel office staff is directly involved

in the grievance, e.g., he is the person against whom the complaint is lodged, or will appear as a witness, the chairman may be selected from outside of the installation civilian personnel office.

b. The committee is a fact-finding and advisory body. Its purpose is to assist the commander in arriving at a prompt and fair decision when reviewing an action taken by an operating official. This is accomplished by making a full and complete evaluation of the evidence in the matter and by furnishing the commander the grievance record (paragraph *12*, Section 2) upon which the committee's recommendations are based.

c. The Secretary of the Air Staff will appoint a grievance committee on an ad hoc basis for hearing grievances emanating from employees in Headquarters USAF and the Office of the Secretary of the Air Force. The composition and functions of this committee will be the same as those provided for the grievance committee at installations.

3. PREPARATION FOR THE HEARING.

a. The chairman of the committee, upon receipt of a request for a hearing, will give all persons immediately concerned written notification of the hearing. These notices will be given sufficiently in advance to permit adequate preparation for the hearing and will:

(1) Indicate the date, time, and place of the hearing, and the nature of the grievance to be considered.

(2) Inform the complainant and the persons(s) complained against of their right to request witnesses to appear in their behalf or to present signed statements from witnesses if witnesses are not available. This notification will state that persons desiring to bring witnesses will furnish the committee chairman with their names together with an indication

of how the testimony of each would be relevant. Both the appellant and the person complained against will be supplied with a list of the witnesses of the other party. The notification also will include the following information:

(*a*) The chairman will request, in writing, the attendance of all witnesses whose testimony has been determined to be relevant and who are Air Force personnel.

(*b*) Witnesses are expected to furnish facts freely and honestly as a basis to a fair and equitable decision.

(*c*) Only witnesses will be heard who, in the opinion of the committee, are in a position to offer testimony relevant to the grievance; whose presence is considered necessary to a fair consideration of the grievance; and whose presence at the hearing is practical.

(3) Advise all persons concerned of their right to:

(*a*) Obtain and submit documentary evidence.

(*b*) Obtain advice from the civilian personnel office relative to regulatory and procedural aspects of preparing the case.

(*c*) Have, or examine, a copy of the grievance procedure.

(*d*) Attend a pre-hearing interview.

(4) Advise the complainant:

(*a*) That he must appear personally before the committee and of his right to arrange for representation at the hearing.

(*b*) Of his right to select one member of the ad hoc grievance committee from the roster furnished with the notice.

b. When the committee chairman requests an Air Force employee to appear as a witness at the hearing, the request will be in writing and sent direct to the employee with a

copy to the employee's supervisor. The employee will be advised that it is his duty to testify, that the testimony of witnesses given freely and honestly is basic to a fair and equitable decision and that his appearance as a witness will be free from any form of interference, criticism, or reprisal on the part of management.

c. In no instance will any person exercise persuasion or coercion in an attempt to influence an employee appearing as a witness at a grievance hearing.

d. If necessary to assure attendance of witnesses, the committee will request appropriate administrative authority to require their presence. The committee, at its decretion, may call witnesses in addition to those originally requested by either party to the matter.

e. The procedures established by Executive Order 10925 and Section .7 of this Chapter will be explained to each employee requesting a grievance hearing before the hearing is granted. The employee will be requested to sign a statement indicating that the above mentioned procedures have been explained and that his grievance is not related to discrimination because of race, color, religion or national origin. If the individual indicates that the matter under consideration is due to discrimination, he will be referred to the deputy employment policy officer.

f. The civilian personnel officer will furnish advisory service to all persons concerned in preparing for a hearing. He will designate the member(s) of his staff, other than the chairman of the committee, to conduct prehearing interviews with the aggrieved employee or his representative and the operating official or his representative.

(1) *The Aggrieved Employee.*

(*a*) In order for the civilian personnel office to exercise its function of advising an employee regarding any question connected with the written statement

of grievance it is essential that the employee state his complaint fully and in detail about time, place, dates, events, and all other information pertinent to the grievance; and to state clearly the remedy he is seeking.

STANDARD FORM 50

NOTIFICATION OF PERSONNEL ACTION

(EMPLOYEE—See General Information on Reverse)
Standard Form 50—Rev. Dec. 1961
U.S. Civil Service Commission
FPM R-1 50-110-03

1. Name (Caps) Last-First-Middle Mr.-Miss.-Mrs.: EDWARDS, JR., DANIEL L., MR.

* * * * *

3. Birth Date (Mo., Day, Year): 05-11-23
4. Social Security No.: 403-26-6602
5. Veteran Preference: 2 (2—5pt.)
6. Tenure Group: 1
7. Service Comp. Date: 09-13-42

* * * * *

9. FEGLI: 1 (1—Covered)
10. Retirement: 1 (1—CS)

* * * * *

12. Nature of Action: 345 (Code) Removal—Inefficiency
13. Effective Date: (Mo., Day, Year): 04-23-62

* * * * *

15. From: Position-Title and Number: Missile Inspection Specialist (Guidance) HQA-1476
16. Pay Plan and Occupation Code: GS-1950
17. Grade or Level: 12
18. Salary: pa 10,255

Standard Form 50

19. Name and Location of Employing Office: AFLC, MAAMA, Detachment #14 (Heath Annex), Dir of Heath Operations Quality Control Div, Quality Assurance Br, Olmsted AFB, Pennsylvania

* * * * *

25. Duty Station (City-County-State): Wright-Patterson AFB, Ohio

* * * * *

27. Appropriation: 431

28. Position Occupied: 1 (1—Competitive Service)

* * * * *

30. Remarks: * * *

Functional Code: 442L10-23

AFSC: 03054

Action taken for unsatisfactory performance of duties as outlined by your supervisor and contained in your official position description.

Notice of proposed action dated 02-15-62, received 02-19-62. Reply dated 04-03-62 and replied orally 04-11-62. Notice of final decision dated 04-16-62.

SF 55 issued 04-20-62. Mailing Address: 8828 Fairfield Avenue, Dayton 31, Ohio

* * * * *

32. Office Maintaining Personnel Folder (If different from employing office): DESC (DESC-AR) Dayton, Ohio

33. Code Employing Department or Agency: AF 05 Department of the Air Force

34. Signature (Or other authorization) and Title for the Appointing Officer: /s/ BRAD ROBBINS—Director, Industrial Relations Office

35. Date: 04-19-62

(1. Employee Copy)

Special Order Appointing Committee

SPECIAL ORDER APPOINTING COMMITTEE

HEADQUARTERS
WRIGHT-PATTERSON AIR FORCE BASE (AFLC)
United States Air Force
Wright-Patterson Air Force Base, Ohio

(Letterhead)

SPECIAL ORDER 14 May 1962
M-104

Under the provisions of Chapter AF A-12, Section 5, AFM-40-1, the following named Air Force Personnel is appointed an AD HOC Grievance Hearing Committee to meet at the call of the Chairman for the purpose of hearing the grievance of Mr Daniel L Edwards, Jr, Missile Inspection Specialist (Guidance), GS-12, Directorate of Heath Operations, and to make recommendations to the Comdr, Middletown Air Materiel Area, for his decision.

Charles A Bradshaw, Placement & Employee Relations Advisor, GS-7 (Chairman without vote)	MAHRA
Francis R Bush, Logistics Specialist, GS-13 (Voting Member)	SANBS
Mrs Henrietta R Oliver, Supv Accountant, GS-11 (Voting Member)	MCCOEC
Mr Lawrence E Toedte, Logistics Officer, GS-14 (Voting Member)	MCFW
Mary L Williams, Shorthand Reporter, GS-9, Recorder (Without vote)	EWJ

FOR THE COMMANDER:

[OFFICIAL SEAL]

Glen E Martin
Administrative Officer
Administrative Services

DISTRIBUTION:
L

LETTER, COL. LAWTON, MAHQI

HEADQUARTERS
MIDDLETOWN AIR MATERIEL AREA
United States Air Force
Detachment 14, Heath Annex
Wright-Patterson Air Force Base, Ohio
(Letterhead)

Reply to Attn of: MAHQI 20 Apr 1962

Subject: Decision to Remove—Inefficiency

To: MAHQI (Mr. Daniel L. Edwards, Jr.)

1. My letter of 16 April 1962 notified you of my decision to remove you on 20 April 1962.

2. You are now advised that the removal date will be 23 April 1962.

3. Other provisions of my 16 April 1962 letter remain unchanged.

/s/ THOMAS O. LAWTON, JR.
THOMAS O. LAWTON, JR.
Colonel, USAF
Director of Heath Operations

Memorandum Decision and Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CASE NO. 3059

DANIEL L. EDWARDS, JR.,

Plaintiff,

v.

EUGENE ZUCKERT, Secretary of the Air Force,

Defendant.

MEMORANDUM DECISION AND ORDER

(Filed July 3, 1967)

This matter is before the Court upon plaintiff's amended motion for summary judgment and defendant's amended motion for summary judgment.

The law with respect to the removal of a federal employee such as plaintiff has been stated in a very recent case decided by the Court of Appeals for the Sixth Circuit, *Fass* v. *Ruegg*, decided June 22, 1967 (17,031).

In the government's brief in support of its amended motion for summary judgment, the government sets forth in detail the reasons for plaintiff's dismissal and the chronology of events. Those facts are not denied by plaintiff. The Court finds that the required procedural steps were followed in the removal of plaintiff from his position and no procedural rights were denied plaintiff in the subsequent reviews. Accordingly, plaintiff's motion for summary judgment should be and hereby is DENIED; defendant's motion for summary judgment should be and it hereby is SUSTAINED.

/s/ CARL A. WEINMAN
Chief Judge U. S. District Court

JUDGMENT

(Filed July 3, 1967)

This action came on for trial (hearing) before the Court, Honorable Carl A. Weinman, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that upon the cross-motions for summary judgment filed by the respective parties and the court being fully advised in the premises that the defendants motion for summary judgment be and it is hereby sustained and Plaintiffs motion for summary judgment is denied and plaintiffs complaint is hereby dismissed.

Dated at Dayton, Ohio, this third day of July, 1967.

/s/ R. L. SNELL
JOHN D. LYTER, *Clerk of Court*
BY: R. L. SNELL, *Deputy.*

LETTER, AFLC, W-P AFB, OHIO, DATED 13 DEC. 1962

Headquarters
AIR FORCE LOGISTICS COMMAND
United States Air Force
Wright-Patterson Air Force Base, Ohio

Reply to Attn of: MCACA 13 Dec 1962

To: Mr. Daniel L. Edwards, Jr.
8828 Fairfield Ave.
Dayton 31, Ohio

Dear Mr. Edwards

1. Reference is made to your claim submitted to the Comptroller General which was forwarded to this Headquarters through Air Force Accounting and Finance Cen-

ter for local settlement. Considerable difficulty was encountered in locating all of your pay and personnel records necessary to adjudicate your claim. It is regretted these difficulties have caused delays in settlement.

2. Listed below are the three separate accounts for which you claim payment for compensation:

a. 2¾ hours compensation 20 October 1961

b. 8 hours compensation 30 November 1961

c. The reduction of 16 hours from your annual leave balance of 222 as shown on AF Form 530-1.

3. Under Public Law 623 you are entitled to pay for the 8 hours (LWOP) suspension on 30 November 1961. You are also entitled to 2¾ hours of pay for the LWOP charge which was made on 20 October 1961, *since your absence was approved and was considered official business.*

4. The reduction of 16 hours from your annual leave balance of 222 as shown on AF Form 530-1 is explained below. It is to be noted the annual leave balance of 222 hours was lined out and changed to 206.

a. Eight hours was deducted for the 8 hours (LWOP) suspension 30 November 1961. In other words the LWOP on 30 November 1961 was changed to annual leave and deducted from your leave balance. Reimbursement was made for this day on the pay period ending 28 April 1962.

b. The annual leave balance shown on AF Form 530-1 is a machine printed amount based on 8 hours of annual leave accrual through pay period ending 28 April 1962. Since your separation was effective on 24 April 1962 you were not entitled to any leave accrual during this period. These 8 hours of annual leave were deducted from the machine printed amount of 222.

5. Your final salary payments included the following:

48 hours compensation for 16 April 1962 through 23 April 1962.

Official time and attendance records for this period indicate you were in a duty status on 16, 17, 18, 19, 20, and 23 April 1962.

8 hours compensation for 30 November 1961 for which your annual leave balance was reduced.

Regular earnings—above 56 hours—$276.64

206 hours lump sum leave for period 24 April through 6 hours on 29 May 1962.

Lump sum leave 206—$1,017.64

6. Payment of 10¾ hours of compensation for which you are entitled will be made by the Finance Officer, Newark Air Force Station, Newark, Ohio in the near future.

Sincerely

/s/ E. A. ELY
E. A. ELY
Chief, Personnel Standards Branch
Civilian Personnel Division

LETTER, COL. NORTH

Office of the Commander

Headquarters
2907th AIR BASE GROUP (DAAFD)
United States Air Force

Gentile Air Force Station
Dayton 20, Ohio
23 Jan 1962

(Letterhead)

Subject: Grievance—Daniel L. Edwards

To: Mr. Daniel L. Edwards
8828 Fairfield Avenue
Dayton 31, Ohio

Letter, Col. North

Dear Mr. Edwards

1. I have reviewed the record of your grievance and the report of the Grievance Committee which convened on 18 January 1962, to hear your grievance in accordance with your request and applicable Air Force regulations.

2. The prime issues given consideration in arriving at my decision were:

a. All government employees have the right of direct recourse to the Inspector General at all times without hindrance or censure.

b. There was no clearly defined evidence presented to substantiate the charge that you went outside proper channels and obtained signature permission on the pass through misrepresentation or subterfuge.

3. In consideration of all the evidence in the grievance record and in the interest of maintaining an effective and efficient work force, it is my decision that the action taken to suspend you from duty for charges as stated is unwarranted, not justified and will be rescinded.

Sincerely

/s/ C. L. NORTH
C. L. NORTH
Colonel, USAF
Commander

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 18,288-18,229
(Filed 16 Oct. 1968)

18,228—JOSEPH N. TOONI,

Plaintiff-Appellant,

v.

EUGENE ZUCKERT, ETC.,

Defendant-Appellee.

18,229—DANIEL L. EDWARDS, JR.,

Plaintiff-Appellant,

v.

EUGENE ZUCKERT, ETC.,

Defendant-Appellee.

ORDER

Before: WEICK, Chief Judge, CELEBREZZE and PECK, Circuit Judges.

In these consolidated cases Appellants appeal from an order of the District Court for the Southern District of Ohio, Western Division at Dayton, sustaining the action of the Secretary of the Air Force in removing the Appellants from civil service employment by the United States Department of Air Force.

Upon consideration of the record, briefs and arguments of counsel, we find no procedural rights were denied the Appellants; and, considering the record as a whole find there was substantial evidence to sustain the removals.

It is ORDERED that the judgment of the District Court be, and it is, hereby affirmed.

ENTERED BY ORDER OF THE COURT

/s/ CARL W. REUSS
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 18,228
(Filed Dec. 10, 1968)

JOSEPH N. TOONI,

Appellant,

vs.

EUGENE ZUCKERT, Secretary of the Air Force,

Appellee.

ORDER

Before: WEICK, Chief Judge, CELEBREZZE and PECK, Circuit Judges.

Upon consideration, it is ORDERED that the petition for rehearing be, and hereby is, denied.

ENTERED BY ORDER OF THE COURT

/s/ CARL W. REUSS
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 18,229
(Filed Dec. 10, 1968)

DANIEL L. EDWARDS, JR.,

Appellant,

vs.

EUGENE ZUCKERT, Secretary of the Air Force,

Appellee.

ORDER

Before: WEICK, Chief Judge, CELEBREZZE and PECK, Circuit Judges.

Upon consideration, it is ORDERED that the petition for rehearing be, and hereby is, denied.

ENTERED BY ORDER OF THE COURT

/s/ CARL W. REUSS
Clerk